

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 99-CV-2496 (GK)
)	
PHILIP MORRIS INCORPORATED,)	
et al.,)	
)	
Defendants.)	

LORILLARD TOBACCO COMPANY'S RESPONSES TO UNITED STATES' FIRST SET OF INTERROGATORIES TO DEFENDANTS

Lorillard Tobacco Company ("Lorillard") responds to United States' First Set of Interrogatories to Defendants ("Interrogatories") as follows:

DEFINED OBJECTIONS

The Defined Objections are set forth below to avoid restating objections to certain of Plaintiff's Interrogatories and, as appropriate, are specifically incorporated into Lorillard's responses to Plaintiff's Interrogatories. The underlined heading of each Defined Objection is provided only for ease of reference, is not intended to define or limit the scope of the Defined Objection, and is not to be considered a substantive part of the Defined Objection.

A. Documents Available to Plaintiff: Lorillard objects to these Interrogatories on the grounds that they are overly broad and unduly burdensome to the extent that they would require Lorillard to undertake a burdensome document review to ascertain responsive information, when Lorillard has already provided documents that may contain responsive information to Plaintiff and when these documents are publicly available to Plaintiff in the Minnesota Depository and on the

Internet. The burden of deriving or ascertaining responsive information from the referenced documents is substantially the same for Plaintiff as it is for Lorillard.

On July 28, 2000, pursuant to paragraph 6 of the Court's Sixth Case Management Order, and consistent with the letter dated May 23, 2000, from Jonathan Redgrave to Paul Honigberg, Lorillard provided electronic copies of its Internet document website images and records ("data tapes") to Plaintiff. Additionally, these documents are available to Plaintiff via (1) the document depository in Minneapolis, Minnesota, established pursuant to litigation entitled *State of Minnesota, et al. v. Philip Morris Incorporated, et al.*, State of Minnesota, County of Ramsey, District Court, Second Judicial Circuit, Court File No. C1-94-8565, and known as the "Minnesota Depository"; and (2) Lorillard's document website available on the Internet through www.tobaccoarchives.com.

Below, in response to certain of these Interrogatories, Lorillard has stated whether documents that may contain information responsive to the Interrogatories are in Plaintiff's possession via the data tapes provided to Plaintiff, are available in the Minnesota Depository, and are on Lorillard's document website. Additionally, Lorillard has identified, where applicable, the Comprehensive request numbers to which Lorillard has agreed to produce documents that may contain responsive information.

B. Unreasonable Time: Lorillard objects to these Interrogatories as overly broad and unduly burdensome to the extent that they request information for an unreasonable period of time, up to and including the present, when no reasonable necessity is shown.

C. Publicly Available Documents: Lorillard objects to these Interrogatories as unduly burdensome to the extent they seek information from or the production of publicly available

documents. The burden of obtaining such information or documents is substantially the same for Plaintiff as it is for Lorillard.

D. Privileges: Lorillard objects to these Interrogatories to the extent they seek the disclosure of information protected from discovery by the attorney-client privilege, the work product doctrine, the joint defense privilege or common interest privilege, and/or any other applicable privileges or exemptions.

E. Trade Secret: Lorillard objects to these Interrogatories to the extent they seek trade secret, proprietary, or highly competitively sensitive information that is subject to special legal protection. Lorillard states that it will produce confidential information responsive to these Interrogatories in the manner prescribed by Orders 7 and 36, the Protective Order and its Addendum.

F. Relevance: Lorillard objects to these Interrogatories to the extent they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

G. Reasonable Particularity: Lorillard objects to these Interrogatories to the extent that they fail to describe the information requested with reasonable particularity such that Lorillard is unable to identify the information sought by Plaintiff.

H. Documents or Information in the Possession or Custody of Third Parties: Lorillard objects to these Interrogatories to the extent they purport to require Lorillard to search the files of third parties, on the grounds that such Interrogatories are overly broad or unduly burdensome. Lorillard also objects to these Interrogatories to the extent they purport to require Lorillard to provide information in the possession or custody of third parties, on the grounds that such Interrogatories seek information that is neither relevant to the subject matter of this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

I. Third Party Confidentiality: Lorillard objects to these Interrogatories to the extent they seek the disclosure of confidential employee personal information or other third party confidential information. Such information is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

J. Preemption: Lorillard objects to these Interrogatories to the extent that information relating to the advertising, marketing or promotion of cigarettes after July 1, 1969, sought by the Interrogatories relates to claims that are preempted by the Federal Cigarette Labeling and Advertising Act, codified as amended at 15 U.S.C. §§ 1331-41. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

K. Constitutional Protection: Lorillard objects to these Interrogatories to the extent they seek documents protected from discovery by privileges arising from the First and Fourteenth Amendments of the United States Constitution, the constitutions of any applicable states, and/or the *Noerr-Pennington* and/or Separation of Powers Doctrines.

L. Tobacco Products: Lorillard objects to these Interrogatories on the grounds that they are overly broad and unduly burdensome to the extent that references to "tobacco" are meant to refer to anything other than tobacco used in the manufacture of cigarettes. Such information is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Lorillard, therefore, limits its responses to information relating to cigarettes.

M. Evidence of Settlement: Lorillard objects to these Interrogatories on the grounds that they are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence to the extent they seek information or documents

regarding "evidence of conduct or statements made in compromise negotiations," which are inadmissible per Federal Rule of Evidence 408.

N. Outside United States: Lorillard objects to these Interrogatories on the grounds that they are overly broad, unduly burdensome, and seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek information concerning the manufacture, advertising and sale of cigarettes outside of the United States.

O. Premature: Lorillard objects to these Interrogatories to the extent they are premature. Discovery in this case is ongoing. Lorillard has not yet had an adequate opportunity to designate witnesses and documents in support of its defenses in this case.

P. Documents or Information in Government's Possession: Lorillard objects to these Interrogatories on the grounds that they are unduly burdensome to the extent that the information requested is contained in documents likely to be in the possession of the United States Government. The burden of obtaining such information or documents is substantially the same for Plaintiff as it is for Lorillard.

OBJECTIONS TO PLAINTIFF'S INSTRUCTIONS AND DEFINITIONS

The Objections to Plaintiff's Instructions and Definitions, set forth below, apply to statements made and instructions outlined in these Interrogatories. They are incorporated into the following responses and shall be deemed continuing as to each Interrogatory, and are not waived, nor in any way limited, by the specific responses.

A. Lorillard objects to Plaintiff's Instructions, Definitions and Interrogatories to the extent they attempt to impose obligations upon Lorillard other than those imposed or authorized by the Federal Rules of Civil Procedure.

B. Lorillard objects to the definition of the term "Communication" in paragraph 2 of Plaintiff's definitions as overly broad, unduly burdensome and beyond the scope of what is required by the Federal Rules of Civil Procedure to the extent it purports to include "all forms of communication, however transmitted, including, for example, all written, oral and electronic communications." The inclusion of electronic communications raises a host of complex licensing, copyright and technical issues. In addition, some electronic information is confidential, trade secret, highly competitively sensitive and proprietary in design as well as content, and is subject to special legal protection. Lorillard reserves the right to produce electronic documents, which may contain responsive information, in printed form.

C. Lorillard objects to the definition of the term "Defendant" in paragraph 4 of Plaintiff's Definitions on the grounds that it is vague, ambiguous and overly broad. Lorillard will interpret the term "Defendant" to mean one or more Defendants named in this action or their predecessors.

D. Lorillard objects to the definition of "Less-Hazardous Cigarette" in paragraph 12 of Plaintiff's "Definitions" on the grounds that it is vague, ambiguous and overly broad. There is no accepted definition of a "less-hazardous cigarette," nor any agreement as to whether a "less-hazardous cigarette" exists or is technologically possible or commercially feasible. It has been alleged, that certain smoke constituents or groups of constituents are associated with adverse health effects to smokers and that reducing or eliminating those constituents would result in a "less-hazardous cigarette." For purposes of these responses only, Lorillard will interpret the phrase "less-hazardous cigarette" to refer to research and development efforts with the goal of reducing the level of those smoke constituents.

E. Lorillard objects to the definition of the term "Marketing" in paragraph 13 of Plaintiff's definitions on the grounds that it is vague, ambiguous and overly broad.

F. Lorillard objects to the definition of the terms "You," "your," "Your Company," or "Your Organization" in paragraph 17 of Plaintiff's Definitions on the grounds that it is vague, ambiguous, overly broad and unduly burdensome to the extent it purports to include persons or entities other than Lorillard. Responses to these Interrogatories are by and for Lorillard Tobacco Company and its predecessors.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each Person who supplied information You used in answering these interrogatories and, as to each such Person, state the information that Person supplied from personal knowledge.

ANSWER: Lorillard incorporates by reference Defined Objections D ("Privileges"), and F ("Relevance"). Lorillard further objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome.

Subject to and without waiving these or the Objections to Plaintiff's Instructions and Definitions stated above, Lorillard states that these responses were prepared by counsel, and are verified by Vincent M. Losito, Assistant Secretary and Assistant Treasurer of Lorillard Tobacco Company, in accordance with the Federal Rules of Civil Procedure.

INTERROGATORY NO. 2: For each affirmative defense or avoidance stated or adopted by reference in Your Answer to the Complaint, state all facts in support of the affirmative defense or avoidance, Identify each Person with personal knowledge of such facts, and Identify Each Document and Communication that demonstrates the existence of such facts.

ANSWER: Lorillard incorporates by reference Defined Objections A ("Documents Available to Plaintiff"), B ("Unreasonable Time"), C ("Publicly Available Documents"), and O ("Premature"). Lorillard further objects to this Interrogatory because it must speculate as to the exact

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS INCORPORATED,
et al.,

Defendants.

Civil Action No. 99-CV-02496 (GK)

Next Scheduled Court
Appearance: July 18, 2002

LORILLARD TOBACCO COMPANY'S RESPONSES
TO THE UNITED STATES' FIRST SET OF REQUESTS FOR ADMISSION
TO ALL DEFENDANTS, AMENDED PURSUANT TO ORDER #119

Lorillard Tobacco Company ("Lorillard") responds to the United States' First Set of Requests for Admission to All Defendants, amended pursuant to Order #119 ("Requests") as follows:

DEFINED OBJECTIONS

The Defined Objections are set forth below to avoid restating objections to Plaintiff's Requests and, as appropriate, are specifically incorporated into Lorillard's responses to Plaintiff's Requests. The underlined heading of each Defined Objection is provided only for ease of reference, is not intended to define or limit the scope of the Defined Objection, and is not to be considered a substantive part of the Defined Objection.

A. Unreasonable Time: Lorillard objects to these Requests as overly broad and unduly burdensome to the extent they request information for an unreasonably long period of time or an unlimited period of time, up to and including the present, when no reasonable necessity is shown.

B. Publicly Available Documents: Lorillard objects to these Requests as unduly burdensome to the extent they seek information from publicly available documents. The burden of obtaining such information is substantially the same for Plaintiff as it is for Lorillard.

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C. Privileges: Lorillard objects to these Requests to the extent they seek the disclosure of information protected from discovery by the attorney-client privilege, the work product doctrine, the joint defense privilege or common interest privilege, and/or any other applicable privileges or exemptions.

D. Relevance: Lorillard objects to these Requests to the extent they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

E. Reasonable Particularity: Lorillard objects to these Requests to the extent they fail to describe the documents or information about which admissions are sought with reasonable particularity such that Lorillard is unable to identify the admission sought by Plaintiff.

F. Possession, Custody or Control: Lorillard objects to these Requests to the extent they purport to (i) require searches of files or provision of information in the possession of third parties or other defendants, or (ii) require Lorillard to make admissions regarding information or materials not within Lorillard's possession, custody or control, as such requirements are inconsistent with Lorillard's obligations under the Federal Rules of Civil Procedure.

OBJECTIONS TO PLAINTIFF'S INSTRUCTIONS AND DEFINITIONS

The Objections to Plaintiff's Instructions and Definitions, set forth below, apply to statements made and instructions outlined in these Requests. They are incorporated into the following responses and shall be deemed continuing as to each Request, and are not waived, nor in any way limited, by the specific responses.

A. Lorillard objects to Plaintiff's Instructions, Definitions and Requests to the extent they attempt to impose obligations upon Lorillard other than those imposed or authorized by the Federal Rules of Civil Procedure.

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B. Lorillard objects to the definition of the term "communication" in paragraph 4 of Plaintiff's Definitions on the grounds that it is overly broad, unduly burdensome, vague and ambiguous.

C. Lorillard objects to the definition of the phrase "environmental tobacco smoke" in paragraph number 7 of Plaintiff's Definitions and as used in these Requests on the grounds that it is overly broad, vague and ambiguous. Lorillard also objects to the use of the terms "sidestream smoke" and "secondhand smoke" to the extent that they are intended to be synonymous with environmental tobacco smoke. Mainstream smoke is the smoke drawn in by smokers. Sidestream smoke is the smoke emitted from the burning end of a cigarette between the puffs taken in by smokers. Environmental Tobacco Smoke ("ETS"), the tobacco smoke to which a nonsmoker may be exposed is a highly diluted, aged mixture of sidestream smoke and exhaled mainstream smoke. The mixture undergoes chemical transformations and physical changes as it ages and is diluted in the air. ETS is not the same as, and nonsmokers do not directly inhale, either mainstream smoke (direct or exhaled) or sidestream smoke. ETS has a profound physical and quantitative chemical distinction from both sidestream smoke and mainstream smoke, including differences in the physical and chemical properties, particle size, and numbers of particles, and relative concentrations of constituents. The constituents in ETS are hundreds to thousands (in some cases, millions) of times more diluted than those constituents in sidestream smoke or mainstream smoke.

D. Lorillard objects to the definition of the phrase "less hazardous cigarette" in paragraph 8 of Plaintiff's Definitions on the grounds that it is vague, ambiguous, overly broad and unduly burdensome. There is no accepted definition of a "less hazardous cigarette," nor any agreement as to whether a "less hazardous cigarette" exists or is technologically possible or commercially feasible. It has been alleged, however, that certain smoke constituents or groups of constituents are associated with adverse health effects to smokers and that reducing or

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eliminating those constituents would result in a "less hazardous cigarette" or "safer cigarette." For purposes of these responses only, Lorillard uses the phrases "less hazardous cigarette" and "safer cigarette" to refer to research and development efforts with the goal of reducing the level of those smoke constituents.

E. Lorillard objects to the definition of the phrase "related to" in paragraph 13 of Plaintiff's Definitions on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, particularly if this phrase is intended to mean anything other than documents which "discuss or refer to" the specified topic. Lorillard, therefore, will interpret all Requests as seeking documents which "discuss or refer to" the specified subject.

F. Lorillard objects to the definition of the terms "you," "your," or "your organization" in paragraph 14 of Plaintiff's Definitions on the grounds that it is vague, ambiguous, overly broad and unduly burdensome to the extent it purports to include persons or entities other than Lorillard. Responses to these Requests are by and for Lorillard Tobacco Company and its predecessors. Lorillard further objects to the definitions of those terms to the extent they require the disclosure of information protected from discovery by the attorney-client privilege, the work product doctrine, the joint defense privilege or common interest privilege, and/or any other applicable privileges or exemptions.

REQUESTS FOR ADMISSION

REQUEST NO. 27: Admit Lorillard Tobacco Company publicly admitted that cigarette smoking causes disease for the first time in 2000. (LL)

RESPONSE: Lorillard incorporates by reference Defined Objections B ("Publicly Available Documents"), D ("Relevance"), and E ("Reasonable Particularity"). Lorillard further objects to this Request because it must speculate as to the exact meaning Plaintiff places on the phrase "publicly admitted," which is subject to varying interpretations and is, therefore, vague and ambiguous.